UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEPHEN DAIGLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 99-135-B
	)	
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,	)	
	)	
Defendant	)	

Recommended Decision on Defendant's Motion to Dismiss

Presently referred to the Court for recommendation is Defendant's Motion to Dismiss (Docket No. 2). Defendant asks the Court to dismiss Plaintiff's claim for earned commissions because it is preempted by the Labor Management Relations Act, 29 U.S.C. §185, and because the collective bargaining agreement (CBA) provision challenged by Plaintiff is lawful. For reasons stated below, I recommend that the Court GRANT Defendant's motion.

Factual Background

Defendant employed Plaintiff as an insurance sales agent. As an insurance agent, Plaintiff was a member of a bargaining unit represented by the United Food & Commercial Workers Union (the Union). A CBA delineated the terms and conditions of Plaintiff's employment including grievance and arbitration provisions and how to calculate an agent's compensation.

On April 9, 1999, Defendant terminated Plaintiff. In response, Plaintiff filed a grievance challenging the termination. That grievance is now pending. In addition to filing the grievance, Plaintiff filed this action claiming that after his termination Defendant refused his request to pay him $34,107.42 in earned commissions. Defendant points to Article 4(H)(3) of the CBA which states that if an agent's employment is terminated no settlement shall be made. Plaintiff claims that Defendant's refusal to pay him $34,107.42 in earned commissions violates the Maine's Prompt Pay Act. Me. Rev. Stat. Ann. tit. 26, § 626 (West 1996 & Supp. 1999).

Discussion

Defendant moves to dismiss Plaintiff's complaint because the claim is preempted by the Labor Management Relations Act (LMRA). 29 U.S.C. § 185. The LMRA preempts a state law claim "wherever a court, in passing upon the asserted state-law claim, would be required to interpret a plausibly disputed provision of the collective bargaining agreement." *Martin v. Shaw's Supermarkets, Inc.*, 105 F.3d 40, 42 (1st Cir. 1997) (citing *Livadas v. Bradshaw*, 512 U.S. 107, 123 (1994)). The purpose behind this rule "lies in the Supreme Court's concern to enforce arbitration clauses, almost always a feature of labor contracts. If judges construed labor agreements in the first instance, the Court believed that the arbitration process would be undermined, and there might be divergent readings of the labor agreement and interference with the grievance process itself." *Id.*

The question posed then, is whether a resolution of Plaintiff's claim requires the Court to interpret a plausibly disputed provision of the CBA. Plaintiff contends that it does not and the Court agrees. Plaintiff is not questioning that under the CBA, the commissions he claims he earned were forfeited. Instead, he is merely asking the Court to determine whether that provision of the CBA violates state law. Because the provision is not a plausibly disputed provision of the CBA, preemption is inapplicable in this case.

This is not the end of the matter. The Court must next determine if the provision could be unlawful under state law. The touchstone in resolving that question is whether Plaintiff ever "earned" the commissions.

Plaintiff's argument assumes that he earned the commissions and that wages are due to him under the Prompt Pay Act. *Community Telecommunications Corp. v. Louran*, 651 A.2d 373 (Me. 1994) (commissions are "wages" under the Act). However, whether the commissions were earned at all is not governed by the Act. In fact, the Law Court has specifically stated that, "the employment agreement, not section 626, governs how wages are earned and, if specified, when wages are paid." *Burke v. Port Resort Realty*, 714 A.2d 837, 839 (Me. 1998).

In *Stebok v. American General Life and Accident Ins. Co.*, 715 F. Supp. 711, 713 (W.D. Pa. 1989) the court faced a claim similar to this one. The plaintiff claimed that under a Pennsylvania statute similar to section 626, the employment contract he signed illegally circumvented the statute by forfeiting those commissions not paid at the time of termination. The court stated the statute "creates a statutory remedy for an employer's breach of its contract duty to pay wages or commissions earned, but it is the employment contract which governs whether certain wages or commission are 'earned.'" *Id.* Stating that the contract provides that all commissions not paid at termination are forfeited, the court concluded that the plaintiff never "earned" the commissions. *Id.*

Likewise, here, the employment contract unambiguously states that no settlement shall be made once an agent is terminated. Therefore, under the employment contract the commissions were not earned prior to his termination. Therefore, section 626 does not apply in this case.[1]

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[1] The Court notes that whether Plaintiff was wrongfully terminated to deprive him of the commissions, or wrongfully terminated for any other reason, will be determined by the grievance procedure as delineated in the CBA.

Conclusion

For reasons stated above, I recommend that Defendant’s motion to dismiss be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on September 9, 1999